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9                   UNITED STATES DISTRICT COURT  
10                   WESTERN DISTRICT OF WASHINGTON

11                   ELIZABETH PETERSON, AMANDA  
12                   CARLTON, REBECCA HIRSCH,  
13                   MICHELE O'DELL, and PRASANNA  
14                   RAMAKRISHNAN, individually and on  
behalf of all others similarly situated,

15                   Plaintiffs,

16                   v.  
17                   BSH HOME APPLIANCES  
18                   CORPORATION,

19                   Defendant.

20                   Case No. 2:23-cv-00543-RAJ

21                   **ORDER GRANTING PLAINTIFFS'**  
**UNOPPOSED MOTION AND**  
**MEMORANDUM OF LAW IN**  
**SUPPORT OF FINAL APPROVAL**  
**OF CLASS ACTION SETTLEMENT**

1        This matter is before the Court on Plaintiffs' Unopposed Motion and Memorandum of  
 2 Law in Support of Final Approval of Class Action Settlement. On January 25, 2024, the Court  
 3 granted Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement  
 4 between Plaintiffs Elizabeth Peterson, Amanda Carlton, Rebecca Hirsch, Michele O'Dell, and  
 5 Prasanna Ramakrishnan ("Plaintiffs" or "Class Representatives") and Defendant BSH Home  
 6 Appliances Corporation ("Bosch" or "Defendant"). (Dkt. 23.)

7        On June 13, 2024, the Court held a Final Approval Hearing to determine whether the  
 8 Settlement should be fully approved as fair, reasonable, and adequate. The Court has  
 9 considered all the submissions and arguments of the Parties.

10      AND NOW, this 13th day of June, 2024, upon careful consideration of Plaintiffs'  
 11 Unopposed Motion and Memorandum of Law in Support of Final Approval of Class Action  
 12 Settlement, and having heard from the Parties at the Final Fairness Hearing held before this  
 13 Court on June 13, 2024, it is hereby **ORDERED** as follows:

14      **1. Definitions.**

15      This Order incorporates by reference the definitions in the Settlement Agreement (Dkt.  
 16 20-1), and all terms used in this Order shall have the same meanings as set forth in the  
 17 Settlement Agreement.

18      **2. Background.**

19      Plaintiffs, individually and on behalf of all others similarly situated, and Defendant  
 20 have entered into a class action Settlement Agreement to settle, fully and finally, all of the  
 21 claims that have been or could have been brought in the two putative class action Lawsuits  
 22 brought against Bosch relating to certain microwave/oven combination products. Specifically,  
 23 Bosch microwave and/or oven combination products with model numbers HBL5751UC,  
 24 HBL8751UC, HMC80151UC, HMC80251UC, and HMNC87151UC (the "Class Products" or  
 25 "Microwave/Ovens") are equipped with vacuum fluorescent display ("VFD") control panels  
 26 ("Control Panels") which fade, dim, become unreadable, and/or fail altogether as a result of a  
 27 defect in the design and/or manufacture of the Class Products ("Display Failure"). According  
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1 to Plaintiffs, extensive expert investigation conducted on their behalf revealed that the  
 2 Microwave/Ovens suffer from a uniform defect which causes the Display Failure and exists at  
 3 the point of sale such that the Microwave/Ovens cannot be used for their intended purpose of  
 4 safely and properly preparing meals at home. Thus, due to improper regulation of the current  
 5 related to the VFD, the displays of the Control Panels burn out in an accelerated manner,  
 6 leading to the display fading beyond any use (the “Defect”). Each Microwave/Oven contained  
 7 the Defect at the point of sale to Plaintiffs and utilized defective and outdated technology  
 8 which rendered the Microwave/Ovens unfit for their ordinary purpose for which they are used  
 9 and posed an unreasonable risk of harm to consumers and their property and were subject to  
 10 premature failure.

11 The Court finds the Settlement is the product of hard-fought litigation and arm’s-length  
 12 negotiations, as well as substantial investigation and litigation over the course of four years  
 13 including: (1) researching the complaints regarding the failed displays and cause of the failure,  
 14 potential causes of action, Defendant’s representations, qualities, and specifications regarding  
 15 the products, as well as the related complex legal and factual issues involved; (2) working with  
 16 a qualified electrical engineer for 10-months of pre-suit expert investigation that included  
 17 significant research on the products and industry standards, testing, and investigation of  
 18 alternative feasible designs; (3) communicating extensively with Plaintiffs and other  
 19 consumers to vet potential claims and understand the practical realities of the alleged Defect;  
 20 (4) briefing and overcoming formidable legal arguments in Defendant’s Motion to Dismiss;  
 21 (5) exchanging discovery, both formally and as part of settlement negotiations; (6) preparing  
 22 and serving third-party discovery on numerous retailers; (7) vigorously advocating on behalf  
 23 of Plaintiffs and the putative Class at mediation; and (8) continuing to work for an additional  
 24 year to negotiate and finalize the Settlement.

25       **3. Class Certification.**

26           **A. Settlement Class.**

27 When this Court granted preliminary approval, the Court preliminary certified the  
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1 following Settlement Class for settlement purposes only:

2 all persons in the United States and its territories who either (a) purchased a new  
3 Class Product, or (b) acquired a new Class Product as part of the purchase or  
4 remodel of a home, or (c) received as a gift, from a donor meeting those  
5 requirements, a new Class Product not used by the donor or by anyone else after  
the donor purchased the Class Product and before the donor gave the Class  
Product to the Settlement Class Member, during the Class Period.

6 Excluded from the Settlement Class were:

7 (i) officers, directors, and employees of Bosch or its parents, subsidiaries, or  
8 affiliates, (ii) insurers of Settlement Class Members, (iii) subrogees or all entities  
9 claiming to be subrogated to the rights of a Class Product purchaser, a Class  
Product owner, or a Settlement Class Member, (iv) persons who acquired an  
10 other-than-new Class Product, (v) issuers or providers of extended warranties or  
11 service contracts for Class Products, and (vi) persons who timely and validly  
exercise their right to be removed from the Settlement class.

12 **B. Certification of the Settlement Class Pursuant to Rule 23 of the Federal  
13 Rules of Civil Procedure Is Appropriate and Warranted.**

14 In the Preliminary Approval Order the Court preliminarily found that the numerosity,  
15 commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23  
16 of the Federal Rules of Civil Procedure were satisfied. Dkt. 23 ¶ 7. Since the Court's  
17 Preliminary Approval Order, the deadline for opt-outs and objections have passed. Upon  
18 review of the declarations of the notice and claims administrator, CPT Group, Inc. ("CPT")  
19 and Settlement Class Counsel, no opt-outs or objections were made by Settlement Class  
20 Members. Additionally, no material changes have occurred since that Order that would alter  
21 this ruling. The Court now finally approves certification of the Settlement Class and the  
22 Settlement Agreement.

23 **4. The Settlement Benefits.**

24 **A. The Settlement Fund**

25 The Settlement provides for the establishment of a Settlement Fund up to \$2,000,000.00  
26 for reimbursement of out-of-pocket costs for the repair or replacement for a Display Failure,  
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1 Notice and Administration, Class Representative Awards of \$2,500, and Attorneys' Fees and  
2 reimbursement of Costs of \$725,000, subject to Court approval.

3 Settlement Class Members fall into two distinct tiers with significant options for relief.  
4 Any Settlement Class Member who provides sufficient documentary Proof of Ownership and  
5 Proof of Display Failure are entitled to reimbursement for out-of-pocket costs and/or an  
6 Extended Service Plan for repair of the Microwave/Ovens, as follows following:

7 ***Tier 1:***

- 8 a. Reimbursement of sufficiently documented out-of-pocket costs up to \$400.00 with  
9 proof that such out of pocket costs related to the Past Display Failure (a display failure  
10 that occurred prior to the Notice Date); and  
11 b. An extended service plan benefit of three (3) years from the date of purchase, wherein  
12 Bosch will replace any VFD control panel that experiences a Display Failure.

13 ***Tier 2:*** Class Members with a Future Display Failure (a display failure that occurs after  
14 the Notice Date) are entitled to an extended service plan benefit of three (3) years from the  
15 date of purchase, wherein Bosch will replace any VFD control panel that experiences a Display  
16 Failure.

17 The Extended Service Plan for Tier 1(b) and Tier 2 Settlement Class Members may be  
18 provided by Bosch through its existing warranty process, which will include either  
19 replacement of the VFD control panel by Bosch or the cash value of the replacement parts and  
20 labor, not to exceed \$250.00. To be eligible for compensation for a Future Display Failure, a  
21 Settlement Class Member must submit a claim within 90 days of the Display Failure.

22 Additionally, the Settlement includes a benefit for consumers with expired extended  
23 service plans. For purchases where the extended service plan benefit has expired prior to or on  
24 the Effective Date, the Class Member would be entitled to 120 days from the Effective Date  
25 to submit an Extended Service Claim.

26 **5. Notice.**

1 Consistent with the Preliminary Approval Order and the proposed Notice Plan, the  
 2 Settlement Administrator, CPT, has notified Settlement Class Members of the Settlement by:  
 3 (a) emailing the notices to all members of the Settlement Class for whom valid email addresses  
 4 are known to Bosch; (b) mailing postcard notice to Settlement Class Members that did not  
 5 have valid email addresses but had valid postal information; (c) implementing a digital notice  
 6 program, including advertising both on social media and through Google and Bing; and (d)  
 7 publishing a press release in PR Newswire for dissemination. In addition, CPT created a  
 8 Settlement Website that includes all necessary and pertinent information for Settlement Class  
 9 Members to call and obtain additional information about the Settlement. The direct notice for  
 10 those with valid email addresses and postal addresses, following deduplication and additional  
 11 data analysis resulted in direct notice to 12,840 of the approximate 28,000 Settlement Class  
 12 Members (approximately 46%). The Notice Plan intended to reach 71% of the Settlement  
 13 Class, which CPT certifies was accomplished.

14 In the Preliminary Approval Order the Court the form and methods of notifying the  
 15 Settlement Class of the terms and conditions of the proposed Settlement Agreement met the  
 16 requirements of Fed. R. Civ. P. 23, any other applicable law, and due process, and constituted  
 17 the best notice practicable under the circumstances.

18 Further, CPT, on behalf of Defendant, caused timely notice of the Settlement and  
 19 related materials to be sent to the Attorney General of the United States and the Attorneys  
 20 General of all states and territories,. The Court finds that such notification complies fully with  
 21 the applicable requirements of the Class Action Fairness Act of 2005.

22 **6. The Settlement is Fair, Reasonable, and Adequate.**

23 “Rule 23(e) of the Federal Rules of Civil Procedure require court approval of all class  
 24 action settlements, which may be granted only after a fairness hearing and a determination that  
 25 the settlement taken as a whole is fair, reasonable, and adequate.” *In re Bluetooth Headset*  
 26 *Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(e)(2)). Rule  
 27 23(e)(2) requires the Court to consider: (1) “whether plaintiffs and their counsel have

1 adequately represented the class”; (2) “whether the proposed settlement was negotiated at  
 2 arm’s length”; (3) “whether the relief provided for the class is adequate”; and (4) “whether the  
 3 proposed settlement treats class members equitably relative to one another.” *Torres v. N. Pac.  
 4 Seafoods, Inc.*, No. 2:20-cv-01545-JLR, 2021 WL 7366175, at \*1 (W.D. Wash. Dec. 9, 2021);  
 5 *see also* Fed. R. Civ. P. 23(e)(2)(A)-(D).

6 The Ninth Circuit has also outlined a number of considerations for determining if a  
 7 proposed settlement is “fair, reasonable, and adequate” under Rule 23(e):

8 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and  
 9 likely duration of further litigation; (3) the risk of maintaining class action status  
 10 throughout the trial; (4) the amount offered in settlement; (5) the extent of  
 11 discovery completed and the stage of the proceedings; (6) the experience and  
 12 view of counsel; (7) the presence of a governmental participant; and (8) the  
 13 reaction of the class members of the proposed settlement.

14       *Hanson v. MGM Resorts Int’l*, No. 16-cv-001661-RAJ, 2018 WL 3630284, at \*5  
 15 (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015)); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). (“Churchill  
 16 factors”).

17           **A. The Settlement satisfies the Rule 23(e)(2) requirements.**

18       ***Plaintiffs and Class Counsel have adequately represented the class under Rule  
 19 23(e)(2)(A).*** Settlement Class Counsel and Settlement Class Representatives have been  
 20 zealous advocates on behalf of consumers who purchased the Microwave/Ovens as they have  
 21 pursued this case since July 2020. The Court has already acknowledged as much in the  
 22 Preliminary Approval Order when it stated “the Settlement Class Representatives and  
 23 Settlement Class Counsel have fairly and adequately represented and protected the interests of  
 24 the Settlement Class and will continue to do so.” Dkt. 23 ¶ 7. This Court sees no reason to  
 25 alter its previous finding and thus Rule 23(e)(2)(A) is satisfied.

26       ***The Settlement is the result of arm’s length negotiations under Rule 23(e)(2)(B).*** The  
 27 Settlement in this action is the product of serious, informed, non-collusive negotiations. The  
 28 Parties were fully aware of the strengths and weaknesses of each other’s positions as well as

1 their own. Only after significant pre-suit investigation, formal and informal discovery, and a  
 2 full day of mediation on November 29, 2022, and by working with Judge Andersen, a highly  
 3 respected and experienced mediator, were the Parties able to reach a settlement in principle.  
 4 The Parties took an additional year to negotiate the specific terms of the Settlement Agreement.  
 5 This Court previously noted as well that “the Settlement has been reached as a result of  
 6 intensive, arm’s-length negotiations using an experienced third-party neutral” and that based  
 7 upon “extensive and costly investigation, research, and discovery” that the “parties are  
 8 reasonably able to evaluate the benefits of settlement” and avoid collusion. Dkt. 23 ¶ 7. This  
 9 Court sees no reason to alter its previous finding and thus Rule 23(e)(2)(B) is satisfied.

10 ***The relief provided to the Class is adequate under Rule 23(e)(2)(C).*** The relief  
 11 provided to the Settlement Class in the Settlement plainly satisfies Rule 23(e)(2)(C). Through  
 12 the efforts of Settlement Class Counsel, all purchasers of the Microwave/Ovens in question  
 13 are entitled to benefits from the Settlement regardless of whether the Microwave/Ovens have  
 14 experienced the Display Failure. The Settlement provides two tiers of benefits in order to  
 15 capture consumers who purchased the Microwave/Ovens which have already manifested  
 16 Display Failures as well as those who purchased the Microwave/Ovens which have not yet  
 17 manifested Display Failures. The Settlement offers a monetary benefit to Settlement Class  
 18 Members for out-of-pocket costs. Additionally, and critically, the Extended Service Plan  
 19 provides a substantial benefit to the Settlement Class and addresses the crux of this litigation,  
 20 which is that Bosch failed to inform consumers at the time of purchase of the latent but  
 21 inevitable Display Failure in the Microwave/Ovens, and through this Settlement, and  
 22 Settlement Class Members would have a remedy available to them which addresses the latent  
 23 nature of the Display Failures. Moreover, absent reaching the Settlement, proceeding in this  
 24 case presented significant costs, risks, and almost certain delays for trial and appeal. The Court  
 25 has already recognized the potential risks and costs avoided by the Settlement in its  
 26 Preliminary Approval Order and sees no reason to depart from its earlier findings. *See* Dkt.  
 27 23 ¶ 7. The claims process is not unduly burdensome and instead ensures only Settlement  
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1 Class Members benefit from the Settlement. Lastly, the proposed fee award is not  
 2 disproportionate given the benefits for the Settlement Class and the circumstances as a whole.  
 3 Therefore, Rule 23(e)(2)(C) is satisfied.

4       ***The Settlement treats Settlement Class Members equitably relative to each other  
 5 under Rule 23(e)(2)(D).*** The Settlement treats Settlement Class Members equitably by  
 6 addressing the totality of the Settlement Class with the understanding that some Settlement  
 7 Class Members have Microwave/Ovens with the Display Failure already manifested, some  
 8 have paid out-of-pocket costs for repair, and others have not yet had Microwave/Ovens suffer  
 9 from Display Failure. All Settlement Class Members are entitled to the Extended Service Plan  
 10 for three years from the date of purchase of the Microwave/Oven, and Settlement Class  
 11 Members who have previously come out-of-pocket to repair the Display Failure or come out-  
 12 of-pocket in the future are made whole. Therefore, Rule 23(e)(2)(D) is satisfied.

13       ***B. The Settlement satisfies the Churchill factors.***

14       (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and  
 15 likely duration of further litigation; (3) the risk of maintaining class action status  
 16 throughout the trial; (4) the amount offered in settlement; (5) the extent of  
 17 discovery completed and the stage of the proceedings; (6) the experience and  
 18 view of counsel; (7) the presence of a governmental participant; and (8) the  
 19 reaction of the class members of the proposed settlement.

20       ***The presence of a governmental participant is inapposite.*** Although it is one of the  
 21 Churchill factors, there is no governmental participant present in this case.

22       ***The strength of the Plaintiff's case weighs in favor final approval.*** Settlement Class  
 23 Counsel firmly believes in the strength of Plaintiffs' case, and that judgment is based upon  
 24 extensive class action experience generally, and product defect litigation specifically.  
 25 Settlement Class Counsel used their experience to vigorously defend in litigation against  
 26 Bosch's counsel, and then used to negotiate the Settlement, which is supportive of final  
 27 approval.

*The risk, expense, complexity, and likely duration of further litigation weighs in favor of final approval.* Absent reaching the Settlement, proceeding in this case presented significant costs, risks, and almost certain delays for trial and appeal. The nature of this case as a product defect class action presents unique risks. The efficiency of accomplishing this Settlement only after prevailing at the dismissal stage is a testament to the high quality of this Settlement and is an intangible benefit of the Settlement provided to Settlement Class Members. Moreover, the Settlement provides prompt and certain relief for Settlement Class Members, whereas continued litigation may have resulted in no benefits or, at best, delayed benefits. The Court sees no reason to depart from its previous finding that “the Settlement has been reached as a result of intensive, arm’s-length negotiations using an experienced third-party neutral” and that based upon “extensive and costly investigation, research, and discovery” that the “parties are reasonably able to evaluate the benefits of settlement.” Dkt. 23 ¶ 7.

*The risk of maintaining class action status throughout the trial weighs in favor of final approval.* Continuing with litigation would have required a battle of the experts related to the Display Failure, including *Daubert* motions, a contested battle over class certification, including the risk of decertification, summary judgment, trial, and a likely subsequent appeal, which weighs in favor of final approval.

*The amount offered in the settlement weighs in favor of final approval.* The Settlement creates a \$2,000,000 Fund that will reimburse Settlement Class Members for out-of-pocket costs. In addition, the Extended Service Plan offers a benefit which adds to the amount offered in the Settlement. The amount offered addresses the latent nature of the Display Failure, which weighs in favor of final approval.

*The extent of discovery completed and the stage of the proceedings weigh in favor of final approval.* From the inception of the case, Settlement Class Counsel consulted with an electrical expert to understand the Display Fade, and the expert’s investigation and analysis informed how Settlement Class Representatives approached each stage of the case, from the

1 construction of the complaints, their responses to motions to dismiss, and mediation. Because  
 2 of the nature of the Display Fade resulting from a design which was no longer the industry  
 3 norm, as well as because of Settlement Class Counsel's substantial efforts, Settlement Class  
 4 Counsel could make informed judgments for purposes of Settlement, and additional discovery  
 5 would provide little value in further assessing the merits of Plaintiffs' claims and defenses.  
 6 Sufficient discovery occurred leading up to and during mediation such that essential  
 7 information for purposes of crafting the Settlement were exchanged. Settlement Class  
 8 Counsel's depth of experience in class action litigation and product defect litigation bore  
 9 heavily here as well, as they were able to discern the strengths and weaknesses of this case  
 10 based on their own experience and accomplish an efficient resolution. Importantly, the Court  
 11 previously noted as well that "the Settlement has been reached as a result of intensive, arm's-  
 12 length negotiations using an experienced third-party neutral" and that based upon "extensive  
 13 and costly investigation, research, and discovery" that the "parties are reasonably able to  
 14 evaluate the benefits of settlement" and avoid collusion. Dkt. 23 ¶ 7. Thus. Rule 23(e)(2)(B)  
 15 is satisfied.

16 ***The experience and views of counsel weigh in favor of final approval.*** Settlement  
 17 Class Counsel have decades of class action litigation experience. Specifically, Settlement  
 18 Class Counsel have extensive experience handling product defect class action lawsuits, with  
 19 successful results and recoveries to class members across the country. Settlement Class  
 20 Counsel worked extensively with a consulting expert for months prior to filing the case as well  
 21 as during the litigation in order to understand the case's merits and shortfalls substantively.  
 22 Settlement Class Counsel appreciated the value of the case as well as the attendant risks of  
 23 further litigation, including the procedural risks inherent in product defect class actions,  
 24 weighed them, and based upon their experience, believed that the Settlement satisfies all  
 25 pertinent requirements under Rule 23. More than that, Settlement Class Counsel believed the  
 26 Settlement was an excellent result for the Settlement Class which provided significant benefits  
 27 to address Bosch's concealment of the latent Display Fade defect at the time of purchase.  
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1 Settlement Class Counsel's judgment weighs in favor of final approval and is entitled to a  
2 presumption of reasonableness. *See Rinky Dink Inc.*, 2015 WL 11234156, at \*5 ("The  
3 recommendation of Plaintiffs' counsel should be given a presumption of reasonableness."  
4 (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008))).

5 ***The reaction of the class members to the Settlement weighs in favor of final approval.***  
6 Not a single Settlement Class Member, through the claims process or otherwise, has objected  
7 or opted out as of April 25, 2024, the deadline for doing so. "[T]he absence of a large number  
8 of objections to the proposed class action settlement raises a strong presumption that the terms  
9 . . . are favorable to the class members." *Fossett v. Brady Corp.*, No. ED CV 16-2572 PA  
10 (SPx), 2021 WL 2273723, at \*9 (C.D. Cal. Mar. 23, 2021) (quoting *Nat'l Rural Telecommms.*  
11 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *see also Baker v. SeaWorld*  
12 *Entm't, Inc.*, No. 14-CV-02129-MMA-AGS, 2020 WL 4260712, at \*8 (S.D. Cal. July 24,  
13 2020) ("The absence of many objectors supports the fairness, reasonableness, and adequacy  
14 of the settlement."). The lack of objections and opt-outs demonstrates the positive reaction of  
15 Settlement Class Members to the Settlement.

16 **7. Final Approval.**

17 For the reasons discussed above, the Court certifies the proposed Settlement Class and  
18 grants Plaintiffs' motion. The Court finds that the Settlement Class satisfies the requirements  
19 of Fed. R. Civ. P. 23(a) and 23(b), and that the Parties' Settlement Agreement is fair,  
20 reasonable, and adequate.

21  
22 DATED this 13th day of June, 2024.

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The Honorable Richard A. Jones  
United States District Judge